

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to
Enhance the Role of Demand Response
in Meeting the State's Resource
Planning Needs and Operational
Requirements.

Rulemaking 13-09-011
(Filed September 19, 2013)

**THE OFFICE OF RATEPAYER ADVOCATES' OPENING COMMENTS
ON COST ALLOCATION, BACK-UP GENERATION, AND THE
DEMAND RESPONSE AUCTION MECHANISM SET ASIDE IN THE
PROPOSED DECISION AND ALTERNATE PROPOSED DECISION**

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I. INTRODUCTION

The Office of Ratepayer Advocates (ORA) submits the following comments on the Proposed Decision (PD) of Administrative Law Judge Kelly A. Hymes and the Alternate Proposed Decision (APD) of Commissioner Peevey dated October 28, 2014 addressing demand response (DR) Phase Two issues and the Motion for Adoption of Settlement Agreement on Phase Three Issues (Settlement). Joint comments from settling parties address issues related to the Settlement. These comments only address the Phase 2 and Phase 3 litigated issues regarding cost allocation, the use of back-up generation (BUGs) and the Demand Response Auction Mechanism (DRAM) as a preferred method of procurement and whether the Commission should ensure adequate participation in the DRAM pilot.

ORA's comments are summarized below:

- Ordering Paragraph (OP) 7a should be removed as the PD/APD errs in equating cost causation with participation eligibility in a DR program;
- The Commission should establish a process for determining whether a new program from a direct access (DA) or community choice aggregator (CCA) provider is "similar" enough to an IOU program to warrant ending cost recovery from the provider's customers and to cease providing the IOU program to DA and CCA customers;
- In the event the Commission adopts OP 7a and 7b, it should modify OP 7a and 7b to clarify that all RA benefits associated with a DR program will be allocated to customers who are eligible and pay for that DR program;
- The PD should be changed to adopt the APD's OP 9 rejecting the use of BUGs in a demand response program for RA purposes, subject to rules adopted in future RA proceedings;
- ORA supports measures to provide the DRAM Pilot with a level playing field to allow it an equal opportunity for success.

II. DISCUSSION

A. The PD/APD Make An Error In Logic Regarding Cost Causation And Do Not Adequately Address The Resulting Changes From Adoption Of Principles

1. The PD/APD Erroneously Equate Cost Causation With Participation Eligibility

The PD/APD state the Commission determined that “the principle of cost causation means that costs should be borne by those customers who cause the utility to incur the expense, not necessarily by those who benefit from the expense” in R.12-06-013.¹ If a demand response program or tariff is only available to bundled customers, the costs for that program or tariff can only be borne by bundled customers.² However, the PD/APD erroneously assumes the costs for the DR program or tariff is simply caused by those customers eligible for participation. It does not recognize that the IOU’s cost-effective DR programs are used as the preferred means of meeting growing energy needs as stated in the state’s Loading Order and Energy Action Plan.³ The state’s goals for preferred resources are the impetus for the IOU DR programs and associated costs. Participation eligibility of utility customers is not the cause of utility costs but rather the state’s goals translate to cost causation. Therefore, OP 7a should be deleted from the PD/APD as it erroneously equates cost causation with participation eligibility.

2. The PD/APD Do Not Address The Process For Determining Whether Direct Access Or Community Choice Provide DR Programs Are “Similar” To IOU Programs

OP 7b of the PD/APD states, “Once a direct access or community choice provider implements its own demand response program, the competing utility shall, no later than one year following the implementation of that program: i) end cost recovery from that

¹ PD, p.43; APD, p.44.

² PD and APD OP 7a.

³ Energy Action Plan II, p.2.

provider's customers for any similar program and ii) cease providing the similar program to that provider's customers. However, the PD/APD do not establish a definition of "similar" for use in implementing the OP. DR programs can be "similar" in terms of technology, capacity, responsiveness, etc. and still be very different in design. While the record does not support establishing a definition of "similar" programs at this time, the Commission should institute a process for determining whether the new program is "similar" enough to a utility program to warrant ending cost recovery from the provider's customers and to cease providing the IOU program. ORA recommends the DA or CCA provider planning to implement a new DR program should be required to submit an application with the Commission demonstrating its similarity with a utility program if they want the utility to end the cost recovery for a similar utility program.

3. The PD/APD Do Not Address Changes To Benefits Of DR Programs As A Result Of Changes In Cost Recovery

IOU's DR programs provide Resource Adequacy (RA) benefits that help meet the Commission's RA requirements for each Load Serving Entity (LSE). In the event that the Commission does adopt OP 7a and 7b of the PD/APD and only collects the costs for DR programs from those customers who are eligible to participate, then it should similarly provide that any RA benefits associated with these DR programs be allocated to those customers eligible for each program. In fact, this is also the position of DACC-AReM.⁴ The Commission should modify OP 7a and 7b to clarify that all RA benefits associated with a DR program will be allocated to customers who are eligible and pay for that DR program.

B. The PD Should Adopt OP 9 Of The APD

OP 9 of the APD states, "It is reasonable to adopt as a policy statement that fossil-fuel emergency back-up generation resources should not be allowed as part of a demand

⁴ DACC-AReM Opening Brief, p.9.

response program for RA purposes, subject to rules adopted in future RA proceedings.” This policy statement is consistent with the state’s goals in the Energy Action Plan and the Loading Order, as stated in OP 8 of the PD and APD, while also recognizing that the RA proceeding takes precedent in determining RA for DR and should be adopted in the PD.

C. The PD/APD Correctly Recognize The Need For A Level Playing Field For The DRAM Pilot

ORA and TURN argued the need to use mechanisms to encourage participation in the DRAM pilot since “other mechanisms may offer more attractive terms to demand response providers than a competitive auction and therefore some measures to provide the DRAM pilot a reasonably-sized test market are likely necessary for a meaningful pilot.”⁵ The PD/APD correctly recognize this issue creates a need to provide a level playing field to test the DRAM pilot.⁶ Availability of a reasonably-sized market for the DRAM pilot will ensure that the DRAM mechanism has an equal opportunity for success and provide the Commission with information to accurately assess the DRAM as a procurement mechanism. ORA supports the Commission’s recognition of the need to provide the DRAM with a level playing field with the IOU’s other methods of procuring DR and looks forward to participation in the DRAM pilot design working group.

⁵ TURN Opening Brief, p.8; APD, p.64.

⁶ PD, p.58-63; APD, p.60-65.

III. CONCLUSION

ORA recommends its proposed changes be incorporated in the PD and APD.

Respectfully submitted,

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